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**ARIZONA ATTORNEY GENERAL**

March 12, 1956  
Opinion No. 56-55

REQUESTED BY: State Chemist

OPINION BY: Robert Morrison, The Attorney General  
Harmon S. Puckett, Assistant Attorney General

QUESTION 1: Are those persons who contract to treat structures, such as private homes, warehouses, public buildings and structures, and building grounds, including ornamental shrubs and lawns, with pesticides, for the control of various pests, subject to compliance with the Arizona Pesticide Act?

CONCLUSION: Yes.

QUESTION 2: In the case of a person who contracts to apply a pesticide, with a stipulation made as to the particular type of pesticide and the strength to be used, must a pesticide of the stipulated strength be used, which is properly registered under the Pesticide Act and otherwise conforms to the requirements of the Act?

CONCLUSION: Yes.

QUESTION 3: May the contractor deliver a more concentrated pesticide to the point of application, said concentrated pesticide being registered and otherwise meeting the provisions of the Pesticide Act, and dilute the concentrated pesticide to the specifications of the contract and apply it without first registering under the Pesticide Act the dilution called for under the contract?

CONCLUSION: Yes, if the pesticide is labeled so as to comply with the Act, and no toxic substances are added.

QUESTION 4: Must a contractor use only pesticides registered under and complying with the provisions of the Arizona Pesticide Act?

CONCLUSION: Yes, subject to conclusion 3 hereof.

QUESTION 5: Must repackaged pesticides be labeled with the manufacturer's labels and made to comply with the provisions of A. R. S. §3-352, previous to transporting for the purpose of applying same?

CONCLUSION: Yes.

The Arizona Pesticide Act, Chapter 106, Laws of 1955, A. R. S. Sections 3-341 to 3-356, inclusive, became effective January 1, 1956.

Although the Act is found in the portion of our Code dealing with Agriculture and Dairying, however, upon reading it, it is apparent that the Act embraces the subject of pesticides generally. This is clearly indicated by A. R. S. §3-341, which contains definitions, and especially No. 17, which defines pesticide.

A. R. S. §3-353 sets forth those who are exempt from the Act and does not include the persons who are the subject of this opinion.

While it may be contended that only services are being sold, if such services include use of pesticides that are distributed, transported, sold or offered for sale, then the persons so doing must comply with the Act and are subject to the penalties imposed by the Act for any violation thereof.

It is, therefore, the opinion of this office that those persons who contract to treat structures, such as private homes, warehouses, public buildings and structures, and building grounds, including ornamental shrubs and lawns, with pesticides, for the control of various pests must comply with the Arizona Pesticide Act.

The problem of whether or not a pesticide of stipulated strength has been used in the fulfillment of a contract is a matter between the contracting parties. However, the pesticide must be properly registered under the Act, A. R. S. §3-351; and, A. R. S. §3-352 prohibits a person ". . . to distribute, sell or offer for sale within the state or deliver for transportation or transport . . . 1. Any pesticide which has not been registered pursuant to the provisions of §3-351, . . ." It is, therefore, our opinion that, when persons contract to apply a pesticide of a particular type and strength to be used, such pesticide must be properly registered under the Pesticide Act and otherwise conform to the requirements of the Act.

A. R. S. §3-352 prohibits and makes it unlawful:

" . . . to distribute, sell or offer for sale within the state or deliver for transportation or transport . . . Any pesticide which contains any substance or substances in quantities highly toxic to man, . . . "

The Act further requires all pesticides to be labeled. Therefore, a contractor may deliver concentrated pesticide to the point of application, provided the concentrated pesticide has been registered and otherwise meets the provisions of the Pesticide Act. He may dilute the concentrated pesticide to the specifications of the contract, and apply it without first registering under the Pesticide Act the dilution. The pesticide must be labeled so as to comply with the Act, and no toxic substances may be added.

A. R. S. §3-352 prohibits and makes it unlawful for any person:

" . . . to distribute, sell or offer for sale within the state or deliver for transportation or transport . . . Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, . . . 'a label' . . . (Emphasis supplied)

Thus, it is also apparent that a contractor is restricted to use only pesticides registered and in compliance with the provisions of the Arizona Pesticide Act.

It is, therefore, the opinion of this office that repackaged pesticides must be labeled with the manufacturer's labels and made to comply with the provisions of A. R. S. §3-352, previous to transporting for the purpose of applying same.

ROBERT MORRISON  
The Attorney General

*Harmon S. Puckett*

HARMON S. PUCKETT  
Assistant Attorney General

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